

**State of California**  
**DEPARTMENT OF INDUSTRIAL RELATIONS**  
**Division of Workers' Compensation**

**NOTICE OF MODIFICATION TO TEXT OF  
PROPOSED REGULATIONS**  
**(Adoption of Emergency Regulations)**

**Subject Matter of Regulations: Medical Provider Networks**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS**  
**SECTIONS 9767.1 – 9767.15**

**NOTICE IS HEREBY GIVEN** that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, and 4616 proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

|                 |   |
|-----------------|---|
| Section 9767.1  | Medical Provider Networks - Definitions               |
| Section 9767.3  | Application for a Medical Provider Network Plan       |
| Section 9767.4  | Cover Page for Medical Provider Network Application   |
| Section 9767.8  | Modification of Medical Provider Network Plan         |
| Section 9767.9  | Transfer of Ongoing Care into the MPN                 |
| Section 9767.10 | Continuity of Care Policy                             |
| Section 9767.12 | Employee Notification                                 |
| Section 9767.13 | Denial of Approval of Application and Reconsideration |
| Section 9767.15 | Compliance with Permanent MPN Regulations             |

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION  
OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray, Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than **5:00 p.m. on Wednesday, July 13, 2005**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at

(415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: [dwcrules@hq.dir.ca.gov](mailto:dwcrules@hq.dir.ca.gov).

## **AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE**

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 455 Golden Gate Avenue, 9th Floor, San Francisco, California.

Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (415) 703-4600 to arrange to inspect the rulemaking file.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations:

|                 |   |
|-----------------|---|
| Section 9767.1  | Medical Provider Networks - Definitions               |
| Section 9767.3  | Application for a Medical Provider Network Plan       |
| Section 9767.4  | Cover Page for Medical Provider Network Application   |
| Section 9767.8  | Modification of Medical Provider Network Plan         |
| Section 9767.9  | Transfer of Ongoing Care into the MPN                 |
| Section 9767.10 | Continuity of Care Policy                             |
| Section 9767.12 | Employee Notification                                 |
| Section 9767.13 | Denial of Approval of Application and Reconsideration |
| Section 9767.15 | Compliance with Permanent MPN Regulations             |

## **DOCUMENTS SUPPORTING THE RULEMAKING FILE**

Comments from various interested parties concerning the Division's proposed changes have been added to the rulemaking file.

## **FORMAT OF PROPOSED MODIFICATIONS**

### **Proposed Text Noticed for 45-Day Comment Period:**

Deletions from the codified emergency regulatory text are indicated by strike-through, thus: ~~deleted language~~.

Additions to the codified emergency regulatory text are indicated by underlining, thus: underlined language.

### **Proposed Text Noticed for First 15-Day Comment Period on Modified Text:**

Double strike-through indicates deleted language proposed on February 9, 2005, thus: ~~~~deleted language~~~~.

Double underline indicates added language proposed on February 9, 2005, thus: added language.

### **Proposed Text Noticed for Second 15-Day Comment Period on Modified Text:**

Italics, double strike-through indicates deleted language proposed on May 26, 2005, thus: ~~*deleted language*~~.

Italics, double underline indicates added language proposed on May 26, 2005, thus: *added language*.

### **Proposed Text Noticed for Third 15-Day Comment Period on Modified Text:**

Bold, double strike-through indicates deleted language proposed on June 28, 2005, thus: ~~**deleted language**~~.

Underline, Arial Font indicates added language proposed on June 28, 2005, thus: added language.

## **SUMMARY OF PROPOSED CHANGES**

### **Modifications to Section 9767.1 Medical Provider Networks - Definitions**

Subdivision (a)(6): The definition of “Employer” was amended to include the term “the Self-Insurer’s Security Fund.” Labor Code section 3743(c) provides that the Fund shall have the same rights as an insolvent self-insurer (self-insured employer) to investigate, adjust and pay claims. Therefore, the Fund is an employer within the meaning of Labor Code section 4616(a)(1) and section 4616.5.

Subdivision (a)(10): The definition of “Insurer” was amended to include the term “California Insurance Guarantee Association.” In *CIGA v. DWC* (April 26, 1005), the WCAB held that although CIGA was not an “ordinary” insurer, since Labor Code section 1063.1 provides that CIGA shall have the same rights as an insolvent insurer to investigate, adjust and pay claims, “CIGA is an ‘insurer’ within the meaning of Labor Code section 4616(a)(1) and is entitled to submit a MPN application.”

In subdivision (a)(20), the definition of “Regional area listing” was amended. The definition now states:

(20) “Regional area listing” means either:

- A) a listing of all MPN providers within a 15-mile radius of an employee’s worksite and/or residence; or
- B) a listing of all MPN providers in the county where the employee resides and/or works if
  1. the employer or insurer cannot produce a provider listing based on a mile radius
  2. or by choice of the employer or insurer, or upon request of the employee.
- C) If the listing described in either (A) or (B) does not provide a minimum of three physicians of each specialty, then the listing shall be expanded by adjacent

counties or by 5-mile increments until the minimum number of physicians per specialty are met.

The definition was amended in response to comments recommending including a mile radius listing because for urban counties such as Los Angeles, a list of all providers would be huge, whereas a mile radius will allow for a more reasonable list of providers.

References to the Labor Code sections 1063.1, 3700, and 3743, regarding the Self-Insurer's Security Fund and CIGA, and reference to *CIGA v. DWC* (April 26, 1005) have been added.

### **Modifications to Section 9767.3      Application for a Medical Provider Network Plan**

Subdivision (d)(8)(C): The last sentence of this subdivision has been modified to state: "By submission of the application, the MPN applicant is confirming that a contractual agreement exists with the physicians, providers or medical group practice in the MPN to provide treatment for injured workers in the workers' compensation system and that the contractual agreement is in compliance with Labor Code section 4609, if applicable."

The subdivision was re-worded in response to comments.

Subdivision (e)(16)(G): The subdivision has been modified to state: "By submission of the application, the MPN applicant is confirming that a contractual agreement exists with the physicians, providers or medical group practice in the MPN to provide treatment for injured workers in the workers' compensation system and that the contractual agreement is in compliance with Labor Code section 4609, if applicable." This paragraph mirrors the requirement set forth in subdivision (d)(8)(C).

The subdivision was re-worded in response to comments.

The reference to Labor Code section 4609 was also added.

### **Modifications to Section 9767.4      Cover Page for Medical Provider Network Application**

Section 9767.4 was amended to include a check-off box entitled "Self-Insurer Security Fund," which reflects the change made to the definitions in section 9767.1(a)(6).

The references to Labor Code sections 3700 and 3743 were also added.

### **Modifications to Section 9767.8      Modification of Medical Provider Network Plan**

Subdivision (a)(1) was amended to delete the words "in the composition" and to add the words "number or specialty of." The phrase "since the approval date of the previous MPN Plan application or modification" was also added so that the sentence now reads: "A change of 10% or more in the number or specialty of providers participating in the network since the approval date of the previous MPN Plan application or modification."

The change was made in response to comments and to clarify that a Notice of MPN Plan Modification is required if there has been a 10% change in number or specialty of providers in the MPN, even if the number of physicians remains the same. This is necessary to ensure the access standards are still met.

Subdivision (a)(2) was modified by the addition of the phrase “since the approval date of the previous MPN Plan application or modification” for clarification.

Subdivisions (a)(3), (4) and (9) the word “material” was changed to “substantive” for clarity. Also in subdivision (a)(9), the word “letters” was changed to “materials” because materials is a more description term of the documents that are sent to the employees.

The first page of the form was amended to add a check-off box entitled “Self-Insurer Security Fund,” which reflects the change made to the definitions in 9767.1(a)(6). The second page of the form was amended to reflect the changes made in subdivision (a): “Change of 10% or more in the number or specialty of Network Providers since the approval date of the previous MPN Plan application or modification,” “Change of 25% or more in the number of covered employees since the approval date of the previous MPN Plan application or modification,” and “Change of employee notification materials: Provide a copy of the revised notification materials.”

The references to Labor Code section 3700, 3743, and 4616.5 were added.

#### **Modifications to Section 9767.9      Transfer of Ongoing Care into the MPN**

Subdivision (e)(1) was amended to change the definition of “acute” from “not more than 30 days” to “less than three months” in response to comments and to be consistent with ACOEM: “The International Association for the Study of Pain has stated that three months in the definitive time frame...” (page 108). This definition is also the same as the one stated in proposed section 9792.20, Medical Treatment Utilization Schedule regulations.

The first sentence of subdivision (f) was re-worded for clarity and syntax. It now states: “If the employer or insurer decides to transfer the covered employee’s medical care to the medical provider network, the employer or insurer shall notify the covered employee of the determination regarding the completion of treatment and the decision to transfer medical care into the medical provider network.”

The following sentence was added to subdivision (g): “The treating physician shall provide the report to the covered employee within twenty calendar days of the request. If the treating physician fails to issue the report, then the determination made by the employer or insurer referred to in (f) shall apply.” This sentence was added to provide a time frame for the treating physician to provide the medical report and to provide a remedy if the treating physician does not issue a report.

#### **Modifications to Section 9767.10      Continuity of Care Policy**

Subdivision (b) was amended to change the definition of “acute” from “not more than 30 days” to “less than three months” in response to comments and to be consistent with ACOEM: “The International Association for the Study of Pain has stated that three months in the definitive time frame...” (page 108). This definition is also the same as the one stated in proposed section 9792.20, Medical Treatment Utilization Schedule regulations.

The following sentence was added to subdivision (d)(2): “The treating physician shall provide the report to the covered employee within twenty calendar days of the request. If the treating physician fails to issue the report, then the determination made by the employer or insurer referred to in (d)(1) shall apply.” This sentence was added to provide a time frame for the treating physician to provide the medical report and to provide a remedy if the treating physician does not issue a report.

### **Modifications to Section 9767.12 Employee Notification**

Subdivision (a)(12) was amended to add the words “and a notification that a copy of the policy shall be provided to an employee upon request.” This phrase was added so that the transfer of care policy must be provided if requested.

### **Modification to Section 9767.13 Denial of Approval of Application and Re-evaluation**

The title of this section was corrected by replacing the word “reconsideration” with the word “Re-evaluation” to be consistent with the remainder of the section.

### **New Proposed Section 9767.15 Compliance with Permanent MPN Regulations**

This section has been added in response to comments, to clarify the status of MPNs established under the emergency regulations, and to set forth that MPNs that were established under the emergency regulations are not required to submit Notices of MPN Plan Modifications and comply with the permanent regulations, unless the MPN is making a change listed in section 9767.8. The section provides:

- a. This section applies to MPNs that were approved by the Administrative Director pursuant to the emergency Medical Provider Network regulations effective November 1, 2004
- b. Employers or insurers whose MPNs were approved pursuant to the emergency Medical Provider Network regulations are not required to submit a Notice of MPN Plan Modification to comply with the new or revised sections of the permanent regulations, including:
  1. Section 9767.3(d)(8)(C) or Section 9767.3(d)(16) regarding the contractual agreements contained in the Application for a Medical Provider Network Plan provisions.
  2. Sections 9767.5(e)(1), (e)(2), (e)(3), (e)(4), 9767.5(h) and 9767.5(i) of the Access Standards provisions.

3. Section 9767.9(g) provision providing a timeline for the treating physician's report and what happens if the treating physician fails to issue a timely report contained in the Transfer of Ongoing Care into the MPN provisions.
  4. Section 9767.10(b)(c) and (d) of the Continuity of Care provisions.
  5. Section 9767.12 (a), (a)(1), (a)(2), (a)(3), (a)(4) and (a)(5) of the Employee Notification provisions.
- c. At the time an employer or insurer with an approved MPN pursuant to the emergency Medical Provider Network regulations submits a Notice of MPN Plan Modification, the employer or insurer shall be required to verify compliance with the sections of the MPN permanent regulations listed in subdivision (b) above.